United Nations CEDAW/C/KWT/CO/3-4/Add.1

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
2 March 2015
English
Original: Arabic

Committee on the Elimination of Discrimination against Women

Concluding observations on the combined third and fourth periodic reports of Kuwait

Addendum

Information provided by Kuwait on the follow-up to the concluding observations of the Committee*

[Date received: 6 January 2015]

* In accordance with the information transmitted to States parties regarding the processing of their *reports, the present document was not edited.*

Please recycle

At the outset, we would like to point out that the State of Kuwait is at all times keen to support, promote and develop all human rights issues and keep up with positive developments in this area which, at the present time, represents one of the lofty goals of the civilized international community.

The Kuwaiti Penal Code, promulgated by Act No. 16 (1960) and the Code of Criminal Procedure, promulgated by Act No. 17 (1960) provide the general legislative basis of crime and punishment. They contain guarantees of the fairness of any criminal proceeding brought against a person and ensure full codification of crimes committed against persons or property, regardless of the sex of the perpetrator or victim, thereby ensuring general deterrence and specific deterrence for everyone. The Kuwaiti Penal Code criminalizes all instances of violence and assault against women (including domestic violence, indecent assault and rape). Age and relationship to the victim are considered as aggravating circumstances, when sentencing. This may be clarified as follows.

1. Prohibition of domestic violence: under articles 160, 161, 162 and 164 of the Penal Code, the State of Kuwait criminalizes acts of violence committed against persons. These stipulations apply to all persons, without distinction between male and female.

2. The Penal Code refrains from providing a definition of honour crimes. However, article 155 thereof stipulates, "He who surprises his wife in the act of adultery (*in flagrante delicto*) or surprises his daughter, mother or sister in the act of sexual intercourse with a man and immediately kills her or the man who is committing adultery or fornicating with her or kills both of them shall be sentenced to a term of imprisonment not exceeding international recommendations in this regard". Granting such a right to the man but not the woman is always taken to represent an absence of equality. However, it should be explained that, alongside the elements of intentional homicide, three conditions must be met for this plea to be allowed:

The capacity of perpetrator: the act of homicide, carried out by the husband of an adulterous wife. However, the legislature has extended the scope of mitigation to include father, brother and son for the same reason as in the case of the husband namely, provocation due to violation of their honour by the action of an adulterous woman;

An adulterous woman surprised in the act of adultery (*in flagrante delicto*): This means that the husband, father, brother or son is confronted unexpectedly with the act of adultery i.e., he is witness to it in reality and is incredulous. At that moment, grounds for mitigation come into effect namely, the psychological agitation caused by such surprise. Here, *in flagrante delicto* means that an adulterous women is witnessed in circumstances that leave no room for reasonable doubt that the crime has actually been committed or is on the verge of occurring. It is a requirement that the husband, father, brother or son actually witnesses the act himself. It is of no account that someone else witnessed the act or informed him thereof, regardless of the degree of confidence in the truth of what that person says. Whether or not the conditions of *in flagrante delicto* are met is for the judge to determine at his own discretion;

The crime is committed immediately: The law requires the crime to be committed immediately i.e., at the same time as the wife is caught *in flagrante*

delicto. It is this simultaneity which provides the grounds for mitigation. The act of homicide at that moment is a reaction to the agitation that seizes hold of the psyche of the husband, father, brother or son in the heat of the moment and it is they alone who may take advantage of this plea. Any accomplice would be liable for murder, unless there are mitigating circumstances.

Given the legislature's concern for the Kuwaiti family, under article 197 of the aforementioned Penal Code a cuckolded husband is entitled to halt the institution of criminal proceedings against a spouse who has committed adultery on condition that the conjugal relationship is resumed as before. The offended spouse is also entitled to ask that the legal process in such a case be discontinued at any stage or that a final sentence be suspended.

3. Concerning non-consensual intercourse with a female, article 186 of the Penal Code stipulates, "Anyone having sexual intercourse with a woman without her consent, through the use of force, threats or deception, shall be liable to the death penalty or life imprisonment. If the offender is an ascendant of the victim or one of the persons entrusted with her upbringing or welfare or vested with authority over her, or a servant or a servant of any of the above-mentioned persons, he shall be liable to the death penalty."

4. Aside from adultery which, if a married woman is accused of it, is a difficult crime to prove under the provisions of the Islamic Shariah, the reasoning behind mitigation should be noted here. The difference between a man who commits this act and a woman consists in the anguish, mental agitation and extreme anger, distress and shock of the surprise caused in him by the sordid and shameful acts committed by the wife, sister or daughter, which are a violation of his honour and dignity and represent his humiliation in front of all and sundry. A woman whose husband commits such an act will be shamed, dishonoured and her affection for and trust in her husband damaged.

5. The State of Kuwait, which enjoys the God-given gift of close family and social ties and upholds its traditions, is completely free from certain manifestations of the violence against women which is widespread in other societies, such as the phenomena of early marriage, trafficking in women and exploiting them for purposes of prostitution and certain assaults on women's health, which affect them physically and psychologically.

6. In relation to measures taken by the State of Kuwait to encourage women victims of domestic or sexual violence to report it to the police and to provide medical, psychological and legal assistance, as well as suitable shelter, the following should be noted:

- Article 9 of the Kuwaiti Constitution stipulates "The family is the foundation of society; its mainstays are religion, morality and love of country. The law shall preserve the integrity of the family, strengthen its bonds and protect, under its aegis, motherhood and childhood.";
- Article 166 of the Kuwaiti Constitution stipulates "The right to litigation is guaranteed to all. The law shall determine the procedures and conditions necessary for the exercise of that right." In the event of assault, victims may thus have recourse to the judiciary by filing charges with the competent authorities. It can be said that a woman's right in this respect is equal to that of a man;

- Article 186 of the Penal Code stipulates "Anyone having sexual intercourse with a woman without her consent, through the use of force, threats or deception, shall be liable to the death penalty or life imprisonment. If the offender is an ascendant of the victim or one of the persons entrusted with her upbringing or welfare or vested with authority over her, or a servant or a servant of any of the above-mentioned persons, he shall be liable to the death penalty."

7. The steps taken by the State of Kuwait in this regard include the establishment by the Ministry of Interior of a community police department, whose responsibilities include monitoring victims of violence, providing them with psychological and social assistance and managing the resolution of individual problems, domestic disputes and disputes between neighbours by amicable means. Furthermore, if complaints of domestic violence are received at a police station – the competent body in Kuwait – the parties to the complaint are most often reconciled, thereby maintaining family peace and upholding Kuwaiti tradition and custom.

8. The State provides appropriate training in the area of human rights in general for its employees, members of the police and public prosecution service, judges and prison staff. This training covers domestic and sexual violence against women. The goal is to enable accession to all international human rights conventions.

The Kuwait Institute for Judicial and Legal Studies provides training in the field of domestic and sexual violence for legal workers in ministries, agencies and civil State bodies, including the judiciary, within the context of promoting human development requirements.

Furthermore, the Government of the State of Kuwait seeks to encourage all civil society organizations concerned with human rights and social work to hold courses, forums and awareness-raising campaigns in this field.

9. Pursuant to Ministerial Decision No. 104 (2008), the State set up a higher human rights commission, chaired by the Minister of Justice. A subcommittee thereof – the international liaison committee – is responsible for preparing periodic reports required from the State of Kuwait under its obligations to human rights conventions. The committee membership consists of several bodies, namely, the Ministry of Foreign Affairs, Ministry of Interior, Ministry of Justice, Ministry of Education, Ministry of Health, Ministry of Social Affairs and Labour, Kuwait University and Ministry of Endowments and Religious Affairs.

On another front, the State of Kuwait has taken the initiative of submitting to the National Assembly (the country's legislative body) a bill to establish a bureau of human rights, with responsibilities including receiving, scrutinizing and investigating complaints about human rights violations, monitoring compliance with international human rights conventions, publishing periodic reports on human rights in Kuwait, counselling concerned parties on legal procedures to be followed with regard to human rights violations and promoting human rights in the State of Kuwait in a manner consistent with universal principles of human rights.

Furthermore, the State of Kuwait is keen to review its operative legislation to ensure compliance with established international standards and promote the values of equality and justice. To achieve this, the Ministry of Justice has set up a legislative review committee. Furthermore, Decision No. 90 (2011) of the Minister of Social

Affairs and Labour was adopted, forming a joint action committee to implement a project to prepare a suitable legal environment to promote the social empowerment of Kuwaiti women. Members of the Cabinet's Women's Affairs Committee participate in this committee, whose key tasks include:

- Identifying Kuwaiti legislation relating to the protection of women and removing all forms of discrimination;
- Scrutinizing similar legislation in Arab States and making use of it to amend or add to Kuwaiti legislation in order to create a social environment that will enable all forms of discrimination against women to be removed;
- Perusing studies from certain Gulf and Arab States and making use of these to empower Kuwaiti women socially;
- Reviewing bills proposed by members of the National Assembly on the civil and political rights of women and preparing an opinion thereon for submission to the relevant authorities;
- Coordinating with relevant bodies to design awareness-raising courses for members of society on the importance of removing all forms of discrimination against women;
- Monitoring statistics and studies relating to women published by various competent bodies in the country, studying these to identify forms of discrimination against women and finding appropriate solutions to reduce the acuteness thereof, in coordination with the relevant State bodies.

10. The Government adopted a Cabinet decision to create a Women's Affairs Committee, reporting to the General Secretariat of the Cabinet and with its budget being part of the Cabinet budget. The main goals and strategies of the committee are:

- Organizing training courses to raise awareness of the role of women and explain their rights and duties;
- Empowering women to play their part in sustainable development;
- Representing the State of Kuwait at conferences and in international quarters and organizations concerned with women's affairs;
- Convening conferences, forums and seminars and conducting research into topics pertaining to women's affairs;
- Carrying out research and studies and reporting on the social, cultural, political, economic, media-related and human aspects of women's affairs and issues;
- Expressing a view on draft laws, edicts and decisions relevant to legislation pertaining to women's affairs and on which the Government is canvassing opinion;
- Publishing pamphlets, magazines and printed materials relating to the goals of the committee.

The Cabinet's Women's Affairs Committee seeks to adopt an inclusive strategy, covering a wide range of multiple sectors relating to women, the family, childhood and motherhood, the issues of age and issues relating to the special

characteristics and circumstances of women in Kuwait. The Committee works in tandem with all Government bodies concerned with women's affairs through members who coordinate the legal, educational, health and social aspects and all other areas of interest to women. The Committee holds forums and lectures to provide information on women's rights conventions. These include a workshop on ways of developing national action plans to implement Security Council resolutions, held by the Committee on 11 and 12 December 2012 in the State of Kuwait, in collaboration with the Economic and Social Commission for Western Asia (ESCWA), and a workshop held on the occasion of International Women's Day, 2013.

11. The State of Kuwait guarantees that women detainees are subject to supervision by female guards in all places of detention. As such, in the area of prison-related legislation, it is most anxious to adopt a policy of reform and rehabilitation of prisoners – both male and female – to ensure their return to society as upright citizens. They are offered social and health care and a range of rehabilitation programmes. Furthermore, under article 56 of Decree Law No. 23 (1990), the public prosecutor is responsible for the technical, penal supervision of prisons. The article stipulates that the public prosecutor shall be responsible for supervising prisons and other places in which sentences are carried out. This guarantees that no woman subject to the provisions of the Penal Code, whether under arrest or in prison shall be subject to abuse.

Prison is divided into a women's prison and a men's prison. Articles 3 and 4 stipulate that the women's prison shall have a female supervisor assisted by an adequate number of female guards. The supervisor shall be responsible to the prison governor for enforcing the law inside the prison.

12. Regarding legal provisions relating to divorce due to injury occasioned by domestic violence, the Kuwaiti Personal Status Act, No. 51 (1984) ensures that women victims of such acts can readily obtain a divorce. Article 126 of the Personal Status Act allows either spouse to petition for separation because of injury done by the other, either verbally or physically, making continued cohabitation between them impossible. Article 127 of the Act, as amended by Act No. 29 of 2004, further stipulates that the court must make every endeavour to reconcile the spouses. However, if reconciliation proves to be impossible and injury has been established, the court must separate them by decree absolute. If injury has not been established, the court must appoint two arbitrators to decide whether the spouses should be reconciled or separated. The Kuwaiti Court of Cassation (ruling No. 298/2005, personal status, session of 7 May 2006) expanded upon this, saying that the explanatory memorandum clearly stated that the purpose of amending the provision by Act No. 29 (2004) was to give an opportunity to the court hearing the divorce case to rule in favour of separation in cases where injury has been conclusively established without needing to refer the dispute to two arbitrators, in view of the consequent prolongation of the case to no avail and the decision being delayed in spite of the evident truth of the matter. If it is not established to the satisfaction of the court that injury occurred or the court is unable to decide and the plaintiff insists upon filing for divorce, two arbitrators will be called to give an opinion on the breakdown of the marriage in accordance with the established rules in this regard. However, arbitrators will only be called in the event that injury is not established by lawful means of establishing proof. It would be inappropriate to follow that course, if the truth in the case in question is evident.

To address disputes arising from family issues and women's issues in particular, the State took the initiative of preparing a bill to set up a family court in each governorate to settle personal status disputes. This court has jurisdiction over all Kuwaitis and non-Kuwaitis of whatever religion and represents a new legislative initiative designed to expedite personal status cases, such as alimony, custody, divorce etc. Associated developments are the establishment of a public prosecutor's office specializing in family affairs and of a centre in each governorate to settle family disputes and protect members of the family from violence and harm inflicted by one of their number. This is an initiative on the part of the State to protect women against violence.

The legislature seeks to alleviate the burden on women victims of having to give evidence of domestic violence, when petitioning for divorce on grounds of injury resulting from ill-treatment. It gives the relevant court full authority to scrutinize all aspects of the case and evaluate the evidence and injury done namely, "the unlawful abuse by one spouse of the other", which is the reason for the petition for divorce. It is sufficient for the aggrieved spouse to establish that the other party caused injury to the aggrieved spouse in one way or another to entitle her under the law to a divorce on grounds of injury.

With regard to the accommodation of victims of domestic violence, the Ministry of Social Affairs and Labour caters for the welfare of certain social categories through the establishment of shelter facilities. Under the terms of the Juveniles Act No. 3 of 1983, insofar as juveniles vulnerable to delinquency constitute one of these categories, their placement in a social institution is deemed to be a preventive measure for their protection (arts. 18 and 19) and they may be retained therein until they reach the age of 21 years (art. 13). In addition to juveniles at risk of delinquency, the Ministry, in its capacity as the authority responsible for social welfare, also shelters members of broken families.

Social welfare institutions also shelter children up to 18 years of age who are of unknown parentage or deprived of family care by reason of orphanhood, the break-up of families or the latter's inability to provide proper care for their children.

On another front, the General Secretariat of Endowments has established a joint national committee to address cases of domestic violence. The committee's membership consists of the relevant State ministries and its goal is to investigate the causes of the problem of domestic violence in Kuwaiti society in recent years, analyse the results of the research and seek an understanding of the causes in order to eradicate such violence and its negative repercussions, which cast a shadow over the members of the family. The committee monitors instances of violence and puts in place measures to treat victims on the basis of a comprehensive strategy to address domestic violence issues and propose suitable ways of combating it.

13. Regarding the Committee's request that information be collected on the number of reported cases of domestic and sexual violence against women, criminal investigations, prosecutions and punishments thereof, disaggregated by sex, age, nationality and relationship between victim and perpetrator, the following is provided..

A statistical annex published by the Ministry of Justice on instances of violence against women in the years from 2005 to 2012

Response to observation No. 35 of the concluding observations of the Committee on the Elimination of Discrimination against Women

1. The concern of the State of Kuwait for the Kuwaiti woman has led to the creation of a well-informed workforce in all employment sectors in the country. The Constitution guarantees women the right to work and to choose the type of work she does, as well as freedom to engage in business and professional activity. Furthermore, the State gives all Kuwaiti women opportunities to learn at every stage of education and the right to assume public positions, on an equal footing with men. Women enjoy special benefits to enable them to carry out their role as mother, such as delivery leave and maternity leave on full pay.

The legal regulation of public and private sector employment guarantees equality in respect of employment. Indeed, a woman is even accorded employment privileges in her capacity as a female worker and mother caring for a family.

The role of the Kuwaiti woman is not confined to serving the community as part of the paid labour force but extends to voluntary work with non-governmental organizations, whose activities cover the cultural, social, artistic and professional fields, as well monitoring and studying women's issues and formulating solutions, in collaboration with governmental and non-governmental organizations.

The legal system governing employment in the State of Kuwait follows global rules. Thus, compulsory labour and the exploitation of workers, whether male or female, are prohibited. Furthermore, article 42 of the Constitution forbids imposition of any type of forced labour except in cases of national emergency specified by law and with fair remuneration. The law takes into account matters that relate to the employment of women and we shall note these in detail. In sum, however, they are appropriate to a woman's nature and accord working women further protection and care, guaranteeing facilities and amenities to help them balance their responsibilities at work and at home.

2. The section of the five-year medium term development plan (2010-2014), annexed to Act No. 9 (2010), on human development policy indicates an increase in job opportunities in the national private sector workforce sufficient to absorb 65 per cent of new entrants to the job market. This represents 14,000 job opportunities on average each year, including opportunities for Kuwaiti women and young people to enter free employment as a result of the promulgation of legislation on small and medium-sized enterprises, with the aim of increasing the proportion of national labour in the private sector from 17 per cent of the total workforce in 2008 to 30 per cent by the end of the development plan.

3. As part of the development plan, the Ministry of Social Affairs and Labour is implementing a project for the economic empowerment of women within the framework of:

- The drive towards greater societal empowerment for Kuwaiti women by supporting their political rights, promoting their role in decision-making positions, broadening the framework of their societal participation and overcoming obstacles to women making greater legitimate gains;
- The development of an institutional mechanism to track the issues of women, young people and the family, monitor progress and failures and propose solutions;

4. Kuwaiti women have begun to exercise their rights as voters and candidates in legislative and parliamentary elections. The strongest indication of this is the success of several female candidates in the recent elections to the National Assembly. The international community has commended progress achieved by the State of Kuwait in the area of women's political rights.

In addition, women have assumed the highest positions in the economic, social and cultural fields. There is now a female minister and female ministerial undersecretary (deputy minister), a female deputy in the National Assembly, a female ambassador, female head of department, as well as businesswomen, female university lecturers and researchers in specialized scientific institutes in Kuwait and a female adviser on formal legal opinions in Shariah law and legislation. In other words, women have begun to participate in political decision-making and this is the most powerful indication of the absence of discrimination against them. Furthermore, the Supreme Judicial Council agreed to the appointment of 62 applicants for the position of legal research/deputy public prosecutor, of whom 22 were female graduates from the faculty of law. The assumption of these judicial posts by women is a positive development.

All this affirms the desire of the State of Kuwait to encourage the representation of women in all fields, the same as men, on the basis of the path of justice and equality followed by the Kuwaiti Constitution as a foundation for governance and in the constant hope that Kuwaiti women will assume more senior leadership positions in the country and enjoy full opportunities.